No. 88-1497

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

LAWRENCE C. BIENEMAN, on his own behalf and on behalf of all persons similarly situated,

Petitioners,

v.

THE CITY OF CHICAGO; EUGENE SAWYER, in his official capacity as Acting Mayor of the City of Chicago; HOWARD STANBACK, in his official capacity as Commissioner of the Department of Aviation of the City of Chicago; AMERICAN AIRLINES, INC.; DELTA AIRLINES, INC.; NORTHWEST AIRLINES, INC.; OZARK AIRLINES, INC.; TRANS WORLD AIRLINES, INC.; UNITED AIR LINES, INC.; and, USAIRLINES, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Where a municipality takes an interest in real property and the owner sues directly under the Fifth Amendment for just compensation, does *Wilson v. Garcia*, 471 U.S. 261 (1985), compel application of the state's personal injury statute of limitations when state law under the identical state constitutional just compensation provision would apply the limitations period for adverse possession?

PARTIES TO THE PROCEEDINGS BELOW

Plaintiff in the District Court and appellant in No. 88-2399 was Lawrence C. Bieneman, on his own behalf and on behalf of all persons similarly situated.

Defendants in the District Court and appellees in No. 88-2399 were: The City of Chicago; Eugene Sawyer, in his official capacity as Acting Mayor of the City of Chicago; Howard Stanback, in his official capacity as Commissioner of the Department of Aviation of the City of Chicago; American Airlines, Inc.; Delta Airlines, Inc.; Northwest Airlines, Inc.; Ozark Airlines, Inc.; Trans World Airlines, Inc.; United Airlines, Inc.; and, USAirlines, Inc.

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LAWRENCE C. BIENEMAN, on his own behalf and on behalf of all persons similarly situated,
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THE CITY OF CHICAGO; EUGENE SAWYER, in his official capacity as Acting Mayor of the City of Chicago; HOWARD STANBACK, in his official capacity as Commissioner of the Department of Aviation of the City of Chicago; AMERICAN AIRLINES, INC.; DELTA AIRLINES, INC.; NORTHWEST AIRLINES, INC.; OZARK AIRLINES, INC.; TRANS WORLD AIRLINES, INC.; UNITED AIR LINES, INC.; and, USAIRLINES, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit in the above entitled cause No. 88-2399.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in No. 88-2399 was rendered on December 13, 1988. It is reprinted at page A-4 of the Appendix.[1]

JURISDICTION

The judgment of the Court of Appeals in No. 88-2399 was entered on December 13, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1). The District Court had jurisdiction over the case pursuant to 28 U.S.C. Section 1331.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved in this case are:

1. The Just Compensation Clause of the Fifth Amendment to the United States Constitution: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

2. The Just Compensation Clause of the Illinois Constitution: "Private Property shall not be taken or damaged without just compensation as provided by law." Ill. Const. art. I sec. 15.

3. The Illinois statute of limitations governing actions to recover compensation for "takings" of interests in real estate: "No person shall commence an action for the recovery of lands, nor make an entry thereon, unless within 20 years after the right to bring such action or make such

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[1] Hereafter, page citations to the Appendix will be referred to as "A-___".

entry first accrued. . . ." Ill. Rev. Stat. ch. 110, Sec. 13-101.

4. The Illinois statute of limitations for personal injury actions: "Actions for damages for an injury to the person. . . shall be commenced within 2 years next after the cause of action accrued. . . ." Ill. Rev. Stat. ch. 110, Sec. 13-202.

STATEMENT OF THE CASE

This case involves the statute of limitations to be applied when a political subdivision of a state takes an interest in real estate and the property owner sues in inverse condemnation directly under the Fifth Amendment to the United States Constitution seeking just compensation for the taking.[2] In identical actions for recovery of just compensation for a taking of real estate under the Illinois Constitution, Illinois courts have ruled that the period of limitations to be applied is the statutory period provided by the state adverse possession statute – 20 years. Disregarding Illinois law, the Court of Appeals held that this Court's decisions in *Wilson v. Garcia*, 471 U.S. 261 (1985), and *Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987), compelled the application of the state limitations period for personal injury actions – two years.

A. The Facts

Petitioner Lawrence C. Bieneman (Bieneman) owns and resides on real property near O'Hare Airport. The

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[2] The action for recovery of just compensation for the taking of an interest in Petitioner's real estate was not brought pursuant to the Civil Rights Statute of 1871, 42 U.S.C. Section 1983. The action was brought directly pursuant to the cause of action for just compensation created by the Fifth Amendment. *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, ___U.S. ___, 107 S.Ct. 2378, 2386 n. 9 (1987).

noise from over 700,000 annual aircraft operations at O'Hare is so overwhelming that Bieneman and other area residents cannot get a decent night's sleep; their children cannot study; and they cannot use their yards or even their living rooms to relax and enjoy their property. The noise problem is compounded by the pervasive stench of aircraft fuel aerosols, a known cancer hazard, which fill the air and rain a potentially deadly toxic mist on homes, yards and schools.

B. The Proceedings Below

In December 1984, Petitioner Bieneman, on his own behalf and on behalf of all persons similarly situated near O'Hare, brought this action for compensation for the "taking" of his property as a result of the intense levels of noise, vibration and air pollution from O'Hare operations. (See Amended Complaint, Count III, A-68). This Court, in *Griggs v. Allegheny County*, 369 U.S. 84 (1962), held that where an airport proprietor allows overflights over residential property which severely disturb sleep, communication, and the use and enjoyment of the property, an avigation easement has been taken which requires the payment of just compensation.

In addition to compensation for a taking within the *Griggs* doctrine, Bieneman sought to recover damages for *personal* injuries caused by airport noise. Though Illinois law provides state law damage remedies for personal injury resulting from excessive noise, vibration and air pollution – as well as a *state* constitutional guarantee prohibiting a taking of property without just compensation – a quirk in Seventh Circuit precedent barred Bieneman from any state law remedies. In contrast to the weight of authority holding that there was no federal preemption of state law damage remedies for injuries caused by noise from airport operations,[3] a solitary 1975 decision by the Seventh

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[3] *Greater Westchester Homeowners Association v. City of Los*

(Footnote continued on the following page)

Circuit held that Congress has preempted state law damage remedies for injuries caused by aircraft operations. *Luedtke v. County of Milwaukee*, 521 F. 2d 387 (7th Cir. 1975). As the law of the Seventh Circuit, *Luedtke* purported to declare a federal constitutional bar to all state remedies.

1. Plaintiff's Initial Complaint

Faced with *Luedtke's* purported federal constitutional bar on all *state* damage remedies, Bieneman initially sought relief under federal law for his personal injuries as well as compensation for the taking of an easement in his property under *Griggs*.

- Count I of the original Complaint alleged with specificity that it has been and continues to be the official policy and practice of the City of Chicago – duly authorized and implemented by City officials and carried out under color of state law – to operate, develop and expand O'Hare International Airport in a manner that intentionally injures Bieneman and his property, and thereby deprives him of his constitutional rights to life, liberty and property in violation of his right to substantive due process. (A-54)[4]
- Count II alleged with specificity that the Airline Defendants have carried out the City's policy

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3 *(Continued)*
Angeles, 26 Cal.3d 86, 160 Cal. Rptr. 733, 603 P.2d 1329 (1979), *cert. denied*, 449 U.S. 820 (1980); *Owen v. City of Atlanta*, 157 Ga.App. 354, 277 S.E.2d 338 (1981), *aff'd, City of Atlanta v. Owen*, 248 Ga. 299, 282 S.E.2d 906, *cert. denied*, 456 U.S. 972 (1982); *Krueger v. Mitchell*, 112 Wis.2d 88, 332 N.W.2d 733 (1983); *Ursin v. New Orleans Aviation Board*, 506 So.2d 947 (La.Ct.App., 1987), *rev'd on other grounds*, 515 So.2d 1087 (La. 1987).

[4] Counts I and II of the First Amended Complaint (A-54) are identical to Counts I and II of the original Complaint.

in active concert and participation with the City Defendants, and that the Airline Defendants have conspired with the City Defendants under color of state law to *intentionally* injure Bieneman and damage his property, and thereby deprive him of his constitutional rights to life, liberty and property. In both Counts I and II, Bieneman sought to recover damages for personal injury and damage to his real and personal property.

Count III was an inverse condemnation claim against the City to recover compensation for the taking of Bieneman's real property. This count alleged that the City, as owner, operator and proprietor of O'Hare, has caused and continues to cause numerous jet-powered aircraft to be operated at all hours through the airspace over or adjacent to Bieneman's property. Bieneman further alleged that these continuous aircraft operations have impacted and continue to impact Bieneman and his property with excessive levels of noise, vibration and air pollution; and as a result, Bieneman's property and airspace had been taken.

The City and Airline Defendants moved to dismiss Counts I and II for failure to state a claim. The District Court granted this portion of their motion, finding that notwithstanding his injuries, Bieneman had not identified a liberty or property interest under the Due Process Clause of the Fourteenth Amendment that had been violated by Defendants (A-87).

The City also sought dismissal of Count III, the inverse condemnation claim, for failure to join the United States as a necessary and indispensable party or, in the alternative, requested a more definite statement. The District Court denied the motion to dismiss, agreeing with Bieneman that

the City was the owner and proprietor of O'Hare and that under *Griggs*, Petitioner stated in Count III a claim upon which relief could be granted (A-87). However, the District Court did require Bieneman to allege more definitely in his Complaint the time he took title to the property and the approximate date of the taking (A-87).

Bieneman moved for reconsideration of the dismissal of Counts I and II, and the requirement of a more definite statement. That motion was denied on March 20, 1986 (A-84).

2. The First Amended Complaint

Thereafter, Bieneman filed his First Amended Complaint (A-54). Counts I and II, based on a denial of substantive due process, were re-stated to preserve the right to appeal their dismissal. The Count III inverse condemnation claim was amended in compliance with the District Court's order to include the date Plaintiff Bieneman took title to his property, 1967, and the approximate date of the taking, 1976. (First Amended Complaint, Count III, pars. 4 and 22; A-68). In addition, a number of pendent counts based on state law were added by Bieneman.

The City and Airline Defendants moved to dismiss all counts of Bieneman's Amended Complaint. The District Court granted Defendants' motions, and entered final judgment, effective June 8, 1987 (A-43; A-44; A-45).

The District Court held that all of Bieneman's state tort law claims were preempted by federal law (A-45). In so ruling, the District Court relied exclusively on the Seventh Circuit's decision in *Luedtke v. County of Milwaukee*, 521 F. 2d 387 (7th Cir. 1975).

The District Court further held that Bieneman failed to state a claim against the City for inverse condemnation, ruling that such a claim could not be based on the Fifth and Fourteenth Amendments, as alleged by Bieneman, but only on 42 U.S.C. sec. 1983. The Court went on to hold that

even if Bieneman's taking claim was amended to allege a violation of Section 1983, Bieneman's claim – which arose in 1976 and was filed in 1984 – would be barred by a five-year statute of limitations applicable to such a Section 1983 action.

3. Proceedings In The Court Of Appeals

Following the decision of the District Court dismissing the Complaint on the merits for failure to state a claim, Bieneman filed a timely notice of appeal. The Court of Appeals dismissed the appeal for lack of jurisdiction, holding that the failure of the District Court to rule on class certification rendered the decision not final. (A-37).

On remand, the District Court denied certification of any aspect of this case as a class action, and based on the prior ruling on the merits, entered final judgment against Bieneman. (A-23; A24; A-25).

On appeal, the Court of Appeals ruled as follows:

1. As to the deprivation of a liberty or property interest, the Court held that in order for there to be a violation of substantive due process, the injury must have been the intended goal of the government activity. (A-9 to A-10).

2. As to the taking claim, the Court of Appeals held that – despite the fact that Illinois would apply a 20-year statute of limitations to inverse condemnation actions for the taking of real estate – *Wilson v. Garcia*, 471 U.S. 261 (1985) and *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 107 S.Ct. 2617 (1989), mandated application of the state's personal injury statute. (A-11 to A-15).

3. As to the state law claims, the Court of Appeals held that its 1975 decision in *Luedtke* was incorrect and that state law damage remedies were not preempted by federal law. The Court of Appeals overruled *Luedtke*. (A-17).

REASONS FOR GRANTING THE WRIT

A. The Decision Below Is In Direct Conflict With The Law Applied By Illinois Courts On Identical Taking Claims

The instant Petition is directed solely at the Court of Appeals' ruling that this Court's decisions in *Wilson* and *Goodman* compel the application of a two-year personal injury statute of limitations to a direct constitutional action for just compensation for Chicago's taking of an easement in Bieneman's real property.

Bieneman's action was not brought pursuant to the Civil Rights Statute of 1871, 42 U.S.C. Section 1983. The action was brought directly pursuant to the cause of action for just compensation created by the Fifth Amendment. *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 107 S.Ct. 2378, 2386 n. 9 (1987). Thus, the legislative intent to be examined here is not that which was examined in *Wilson* and *Goodman*, *i.e.*, the intent of the 42nd Congress in passing the Civil Rights Act of 1871. The construction of that Act is not at issue here.

Nor is this a situation where the federal remedy – a direct action for just compensation for the taking of real property – is a unique federal remedy with "no precise counterpart in state law". *Wilson v. Garcia*, 471 U.S. at 271. In identical actions for recovery of just compensation for a taking of real estate under the Illinois Constitution, the Illinois courts have ruled that the applicable period of limitations is the statutory period provided by the state adverse possession statute – 20 years.

In extending *Wilson* and *Goodman* well beyond the boundaries of the 1871 Civil Rights Act, the Court of Appeals has trivialized the Just Compensation Clause of the Fifth Amendment. How can logic reconcile the fact that an inverse condemnation action for the "taking" of real estate under the Just Compensation Clause of the

Illinois constitution is governed by a 20-year limitations period, while the identical action under the federal constitution is limited to two years under the state personal injury statute? There is nothing in either *Wilson* or *Goodman* that compels such an anomalous result.

B. The Limitations Period Applied To Taking Claims Under Illinois Law

This Court has declared that the proprietor of an airport, such as the City of Chicago, has a constitutional obligation to pay neighboring property owners for substantial interference with the use and enjoyment of their property arising from the noise of aircraft operations. This Court has characterized this interference as the taking of an easement in real estate:

> We think, however, that respondent, which was the *promoter, owner and lessor of the airport*, was in these circumstances the one who took the *air easement in the constitutional sense*. . . . We see no difference between its responsibility for the air easements necessary for operation of the airport and its responsibility for the land on which the runways were built. . . . A county that designed and constructed a bridge would not have a usable facility unless it had at least an easement over the land necessary for the approaches to the bridge. * * * *The glide path for the northeast runway is as necessary for the operation of the airport as is a surface highway for operation of a bridge*. . . . Without the "approach areas" an airport is indeed not operable. Respondent in designing it had to acquire some private property. Our conclusion is that *by constitutional standards it did not acquire enough.*
>
> *Griggs v. Allegheny County*, 369 U.S. 84, at 89-90 (1962) (emphasis added).

The law is clear that where a person's use and enjoyment of property is severely impaired by aircraft noise there has been a "taking" within the meaning of the Fifth

and Fourteenth Amendments; and that the airport proprietor, in this case Chicago, is the entity liable for the taking. *See Griggs v. Allegheny County*, 369 U.S. 84 (1962); *Thornburg v. Port of Portland*, 233 Or. 178, 376 P.2d 100 (1962); *City of Jacksonville v. Schumann*, 167 So.2d 95 (Fla.Dist.Ct.App. 1964); *Highline School District No. 401, King County v. Port of Seattle*, 87 Wash.2d 6, 548 P.2d 1085 (Wash. 1976).

Where the action is for inverse condemnation to recover compensation for interests in real estate taken by state or local governments, the majority rule in most jurisdictions – including Illinois – has long been that the appropriate statute of limitations is the statutory period for actions to recover land under adverse possession. *Petersen v. Port of Seattle*, 94 Wash.2d 479, 618 P.2d 67 (1980); *Brazos River Authority v. City of Graham*, 163 Tex. 167, 354 S.W.2d 99 (1961); *Krambeck v. City of Gretna*, 198 Neb. 608, 254 N.W.2d 691 (1977); *Faulk v. Missouri River & N.W. Ry.*, 28 S.D. 1, 132 N.W. 233 (1911); *Aylmore v. City of Seattle*, 100 Wash. 515, 171 P. 659 (1918); *Love v. Postal Telegraph-Cable Co.*, 221 N.C. 469, 20 S.E.2d 337 (1942); *accord DiSanto v. City of Warrenville*, 17 Ill. Dec. 289, 59 Ill.App.3d 931, 376 N.E.2d 288 (2d Dist. 1978); *People ex. rel. Markgraff v. Rosenfield*, 383 Ill. 468, 50 N.E.2d 479 (1943); *Cf. Village of Palatine v. Dahle*, 385 Ill. 621, 53 N.E.2d 608 (1944); *Rosenthal v. City of Crystal Lake*, 171 Ill.App.3d 428, 525 N.E.2d 1176, 121 Ill. Dec. 869 (2nd Dist. 1988); *Ruck v. Midwest Hunting and Fishing Club*, 104 Ill.App.2d 185, 243 N.E.2d 834 (2nd Dist. 1968).

The vast majority of courts, including those in Illinois, have ruled that where there is a "taking", the appropriate statute of limitations is the statutory period provided by the state adverse possession statute – 20 years in Illinois. Ill. Rev. Stat., ch. 110, Sec. 13-101. Courts have consistently rejected shorter limitation periods. Otherwise, bodies cloaked with condemnation authority could obtain

the legal equivalent of adverse possession in a far shorter period than statutorily required for adverse possession. Courts have recognized that the end result of an inverse condemnation action is to transfer an easement to the governmental body, the same easement that would be obtained with adverse possession.

The logic of tying the inverse condemnation for a *taking* to the statutory period for recovery of lands under adverse possession was stated in Lewis, *A Treatise on the Law of Eminent Domain in the United States*, Section 966 (3d ed. 1909):

> Where the Constitution requires compensation either expressly or as interpreted by the courts to be first made for property taken for public use, a law which casts the initiative upon the owner to prosecute his claim for compensation within a time limited or be barred is invalid. Where under such a constitution property is appropriated for public use without complying therewith, *the owners right to compensation is not barred, except by adverse possession for the prescriptive period.*
>
> *Lewis* at p. 1713 (emphasis added).

In *Krambeck v. City of Gretna*, 198 Neb. 608, 254 N.W.2d 691 (1977), the court stated the logic of this principle as follows:

> Inverse condemnation is analogous to an action by a private owner against another private individual or entity to recover the title to or possession of property. While the property owner cannot compel the return of the property taken because of the eminent domain power of the condemnor, he has a constitutional right as a substitute to just compensation for what was taken.
>
> 254 N.W.2d at 695.

In *Love v. Postal Telegraph-Cable Co.*, 221 N.C. 469, 20 S.E.2d 337 (1942), the Court stated:

> In short, in its broader aspect, the suit is to recover for the value of an easement, which can pass to the defendant only by grant, condemnation or prescription – this last by *adverse possession and continuous user [sic] for a period of twenty years.*
>
> The awarding of permanent damages would be equivalent to an easement by condemnation.
>
> 20 S.E. 2d at 338 (emphasis added).

Illinois follows the rule that where the action is for inverse condemnation for compensation for a taking, the applicable statute of limitations is the period of limitations established by statute for adverse possession.[5] In Illinois, that period is 20 years. Ill.Rev.Stat. ch. 110, Sec. 13-101.

The court in *DiSanto v. City of Warrenville*, 17 Ill. Dec. 289, 59 Ill.App.3d 931, 376 N.E.2d 288 (2d Dist. 1978), confronted an inverse condemnation action commenced more than five years following the alleged taking of sewer and

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[5] The Illinois Constitution mandates compensation for a "damaging" as well as a "taking". The statute of limitations for a "damaging" as opposed to a "taking" is five years. *Horn v. City of Chicago*, 403 Ill. 549, 87 N.E.2d 642 (1949), *appeal dismissed*, 338 U.S. 940 (1950). For flights *over* Bieneman's property – as in *Griggs* – the action is considered a "taking". The distinction between a taking and consequential damages is discussed at length in *Batten v. United States*, 306 F.2d 580 (10th Cir. 1962), *cert. denied*, 371 U.S. 955 (1963). In *Batten* – unlike the instant case – *there were no overflights*. Because there were no overflights, the court held that the injuries were "consequential damages" (306 F.2d at p. 583), and that the Fifth Amendment did not provide compensation for damaging as opposed to taking: "In construing and applying this constitutional provision the federal courts have long and consistently recognized the distinction between a taking and consequential damages. . . . Because of this rule, which denies recovery of consequential damages in the absence of any taking, many state constitutions provide in substance that private property shall not be taken or damaged without compensation. However, the federal obligation has not been so enlarged by statute or by constitutional amendment." 306 F.2d at 583-584.

water improvements. The court determined that no taking had occurred because these had been no physical invasion of DiSanto's property. Yet the court still rejected the city's argument that a taking claim would be barred by a statute of limitations. The court found that the 20-year adverse possession statute of limitations applied to inverse condemnation proceedings; and like this case, the 20-year period had not elapsed before the action was brought:

> We could not agree, however, that laches is a bar to Count V of the complaint. In that count the plaintiffs, in effect, asked for a writ of mandamus compelling the institution of eminent domain proceedings. * * * Since the limitations period for adverse possession of real property (20 years) had not run at the commencement of the action, the plaintiffs are not barred in Count V by the statute of limitations. (Ill. Rev. Stat. 1975, ch. 83, par. 1; *cf. Village of Palatine v. Dahle*, 385 Ill. 621, 628, 53 N.E.2d 608 (1944).
>
> 376 N.E.2d at 295 (1978).

Another Illinois case dealing with the statute of limitations pertinent to inverse condemnation takings is *People ex. rel. Markgraff v. Rosenfield*, 383 Ill. 468, 50 N.E.2d 479 (1943). In *Markgraff*, the plaintiffs and their predecessors in interest waited roughly twelve years to bring an action against the Department of Public Works and Buildings for appropriating some of their land for a highway without compensation. Because a special highway statute applied to adverse possession for highway construction (15 years vs. the normal 20 years), the court dealt with a 15 year statute for adverse possession:

> Unless the owner whose land is wrongfully taken acquiesces in the trespass, taking and use of the property for a public highway for the statutory period of fifteen years, such owner cannot be defeated of his right to compensation. Under section 139 of the Roads and Bridges Act (Ill. Rev. Stat. 1941 chap. 121, par. 152) in order that the

> Department acquire an easement by adverse use, such adverse possession must continue for a period of fifteen years.
>
> 50 N.E.2d at 481 (emphasis added).

Based on the above analysis, it is clear that the taking claim for inverse condemnation contained in Count III was governed by a 20-year statute of limitations. Since that period had not passed, Count III was not barred by the statute of limitations.

C. There Is Nothing In Either *Wilson* Or *Goodman* That Mandates Use Of The Personal Injury Statute Of Limitations To Govern A Direct Fifth Amendment Action For Just Compensation

Under normal practice, federal courts will borrow the most analogous state statute of limitations to govern a federal claim for which no statute of limitations has been prescribed by Congress. *Runyon v. McCrary*, 427 U.S. 160, 180 (1976); *Johnson v. Railway Express Agency*, 421 U.S. 454, 462 (1975); *Chattanooga Foundry & Pipe Works v. Atlanta*, 203 U.S. 390, 397-398 (1906).

As discussed above, Illinois has a directly analogous cause of action to the federal constitutional claim for just compensation for a taking of real property. It is clear that for a "taking" of real property – be it a taking under the Illinois Constitution or the Federal Constitution – Illinois courts use the statutory period for adverse possession for real estate (20 years) as the statute of limitations. Thus, absent compelling reasons to the contrary, the jurisprudence of this Court dictates that federal courts should – under parallel enforcement of the Fifth Amendment right to just compensation for the taking of real property – apply the same statute of limitations as the Illinois courts.

There is nothing in the decisions of this Court in *Wilson* or *Goodman* that compels a different result. Both cases involve what this Court said were at heart "questions of

statutory construction," *Wilson*, 471 U.S. at 268: the intent of the 42nd Congress in enacting the Civil Rights Act of 1871 and the statute of limitations that Congress intended to apply to actions brought under the Act. In both cases this Court interpreted that the intent of the Congress in the 1871 Civil Rights statute to focus on personal injury oriented tort remedies.

> Among the potential analogies, Congress unquestionably would have considered the remedies established in the Civil Rights Act to be more analogous to tort claims for personal injury, than, for example, to claims for damages to property or breach of contract.
>
> *Wilson*, 471 U.S. at 277.

> Had the 42nd Congress expressly focused on the issue decided today, we believe it would have characterized Section 1983 as conferring a general remedy for injuries to personal rights.
>
> *Wilson*, 471 U.S. at 278.

> [B]ecause claims under Section 1983 are in essence claims for personal injury, the state statute applicable to such claims should be borrowed.
>
> *Goodman*, 107 S. Ct. at 2621.[6]

Thus, *Wilson* and *Goodman* were both predicated on this Court's conclusion that Congress would have applied a personal injury statute of limitations to actions under the 1871 Civil Rights Act. But there is nothing in the direct Fifth Amendment claim to recover just compensation for the seizure of an interest in real estate that even remotely suggests a personal injury action. Nor is there anything in the history of the Fifth Amendment's "Just Compensation Clause" which suggests that the concern there was personal injury – as opposed to protection of property.

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[6] *Accord, Owens v. Okyre*,___U.S.___, 109 S.Ct. 573, 577 (1989).

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests this Court to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit in No. 88-2399.

Respectfully submitted,

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